

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: § CASE NO. 20-33948-11  
§  
FIELDWOOD ENERGY, LLC AND § HOUSTON, TEXAS  
OFFICIAL COMMITTEE OF §  
UNSECURED CREDITORS, § MONDAY,  
§ JANUARY 4, 2021  
DEBTORS. § 9:00 A.M. TO 10:02 A.M.

MOTION TO EXTEND EXCLUSIVITY (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: (SEE NEXT PAGE)

(Recorded via CourtSpeak; No log notes)

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WITNESS:

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(NONE)

EXHIBITS:

Offered

Received

DEBTORS' EXHIBITS

Nos. 734-1 through 734-9:

35

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1           HOUSTON, TEXAS; MONDAY, JANUARY 4, 2021; 9:00 A.M.

2           THE COURT: All right. Good morning. We're here  
3 in the Fieldwood Energy case. It is 20-33948.

4           We've taken electronic appearances. If you  
5 haven't already made your electronic appearance, please do  
6 so by going to our website.

7           Before we actually start the hearing, I want to  
8 confront the elephant in the room, which is how are we going  
9 to procedurally decide whether the claims of the sureties  
10 are, in fact, administrative claims? I don't know whether  
11 that ought to be decided in the context of a contested  
12 matter where we could go ahead, for example, and extend  
13 exclusivity, but subject to the outcome of that whether that  
14 should be decided in an adversary proceeding and form the  
15 declaratory judgment or just how to go about deciding that.

16           So as you all address it, if you would please  
17 address for me the appropriate procedure.

18           I start the hearing skeptical because, as I'm sure  
19 you all know, I have on repeated occasions said that it  
20 seems to me that the payment of premiums or indemnity  
21 obligations with respect to a prepetition risk by a surety  
22 is prepetition and it is not administrative. I may be wrong  
23 about that and I need to understand the argument well and I  
24 need to be able to rule on it I think in a format where  
25 people can have a nice clean appeal of what I'm doing to

1 either side.

2           So I'm going to go ahead and start with the  
3 Debtors and hear where they are with respect to the Motion  
4 to extend exclusivity, but then I want to move immediately  
5 into the sureties about how they want this issue addressed.  
6 It's a really important issue. It needs to be addressed in  
7 the proper way.

8           So if I could start by asking whoever's going to  
9 take lead for the Debtors to press five star one time on  
10 your phone? And then whoever wants to take the initial lead  
11 for the insurance companies to go next.

12           Mr. Perez?

13           MR. PEREZ: Good morning, Your Honor.

14           Alfredo Perez, on behalf of the Debtors. I'm  
15 joined by Mr. Barr and Ms. Liou and Mr. Carlson.

16           Your Honor, we're here for the hearing on the  
17 Motion for Exclusivity. We only received kind of a group of  
18 objections not really to the exclusivity, but requesting  
19 relief and related to the surety contracts.

20           As the Court may be aware, on New Year's Eve, we  
21 filed a proposed plan. That Plan is -- and Disclosure  
22 Statement -- that Plan and Disclosure Statement. The  
23 Disclosure Statement Hearing is set for hearing on  
24 February 3rd and we are requesting -- and we will be  
25 requesting at that time, if the Court approves the

1 Disclosure Statement, that the Confirmation Hearing be set  
2 around March 17th.

3 And, Your Honor, I do believe that now that we  
4 have the Plan on file that -- and we're executing on the  
5 Plan, that some of the issues relating to the sureties may  
6 fall away. Having said that, Your Honor, I don't believe  
7 that there is any scenario where there won't be issues  
8 relating to the sureties. And it was our understanding and  
9 belief that these issues would be teed up in the context of  
10 confirmation of the Plan and that's what we had anticipated.

11 To the extent that we want to begin that -- begin  
12 those issues more quickly, we're certainly happy to do so.  
13 We too share the Court's skepticism as to whether these  
14 premiums are administrative expenses considering the fact  
15 that nothing that we do today will in any way impact the  
16 sureties' obligations to the people who hold the bonds. But  
17 again we're certainly happy to brief the issue in the form  
18 of a contested matter, if that's what the Court thinks is  
19 the most appropriate way to handle it.

20 We have -- I mean, this has been a reoccurring  
21 issue. It came up at the Second Day Hearing. There was a  
22 long colloquy with the Court and with some of the same  
23 people who are on the phone today and it's now come up in  
24 this context really not having anything to do with  
25 exclusivity but having more to do with the treatment of

1 their -- of what they claim are administrative expenses. We  
2 just don't believe that's the case.

3 So, Your Honor, I think we're happy to be guided  
4 by what the Court believes is the most efficient way to do  
5 it. We were thinking of doing it in the context of  
6 confirmation. We thought that would be the most efficient  
7 way, but if the Court wants to separate that and deal with  
8 it differently, we're certainly happy to do that as well.

9 THE COURT: But in any event, you're waiving the  
10 need for an adversary proceeding to declare the question,  
11 right? You're willing to do it in a contested matter  
12 whether it's contested with this, contested as a separate  
13 contested matter, contested at confirmation. You're not  
14 going to insist on an adversary proceeding.

15 MR. PEREZ: Correct, Your Honor.

16 THE COURT: All right. From 973-530-2077, who do  
17 I have on the phone?

18 MR. GRZYB: Good morning, Your Honor.

19 Darren Grzyb with Chiesa Shahinian and Giantomasi.  
20 I represent four of the sureties at issue, Your Honor:  
21 Aspen, Berkley, Everest and Sirius. We filed the -- I think  
22 the first limited objection to the Motion to extend the  
23 exclusivity period. And it is a limited objection because,  
24 as Counsel correctly noted, we -- the concept of extending  
25 the exclusivity period in and of itself is not something



1 that my four clients object to. It's just that some of the  
2 underpinnings and the factors upon which the Debtors relied  
3 in making this Motion are just not accurate, at least in our  
4 mind, Judge.

5           The sureties group, as a group, has extended  
6 surety credit in the amount of \$1.165 billion, that  
7 \$498 million of that is tied to a decommissioning agreement  
8 with Apache, which is a critical part of -- at least in  
9 terms -- as far as I can tell -- I'm just very new to the  
10 Disclosure Statement -- it's a critical part to their Plan  
11 of Reorganization.

12           Now the surety product in itself is a credit  
13 arrangement. We, the sureties, issue surety credit in  
14 exchange for premiums and the obligation by the Debtors in  
15 this case to indemnify the surety for any losses under the  
16 bonds. This allows them to continue to do their business.  
17 It allows them to support the Agreements that they entered  
18 into like with Apache, a third party, as part of the deal.  
19 It also allows them to fulfill their legal requirement to  
20 the Government with respect to their operations.

21           Now in their surety bond program Motion, which  
22 they filed on the 2nd day after their Petition, they said  
23 that the surety bond program is essential to their business  
24 operations. They obtained relief to continue that surety  
25 bond program pursuant to 503(d) as an admin expense.

1           And so I was definitely surprised to receive on  
2 New Year's Day an objection to calling the premium an admin  
3 expense.

4           Now premium -- I think Your Honor's correct to  
5 look at this obligation from a different perspective.  
6 Premiums, as in ordinary course of business, are an admin  
7 expense. They acknowledge in a surety bond program order,  
8 become due every year.

9           One of my clients, Everest, had renewal premiums  
10 in the amount of \$400,000 that all came due in October post-  
11 petition. That is an obligation that allows them to  
12 continue their work, their operations and it's an obligation  
13 that arose post-petition as an admin expense per the surety  
14 bond program Order that they requested Your Honor to enter.

15           THE COURT: Wait, wait, wait. It arose post-  
16 petition or it became due post-petition? Those are  
17 different statements. I want to be sure I understand it.

18           MR. GRZYB: Well, they could have -- I would say  
19 it arose post-petition because they could have replaced the  
20 surety market with Everest post-petition. That's what the  
21 surety bond program allowed them to do so --

22           THE COURT: How did it arise -- I understand how  
23 it became due post-petition. How did it arise post-  
24 petition? Isn't it a -- because I may misunderstand the  
25 facts.

1 I thought it was a prepetition credit arrangement  
2 like you described and amounts due under a prepetition  
3 credit arrangement ordinarily don't arise post-petition.  
4 They ordinarily have arisen prepetition and that's a big  
5 distinction to me.

6 MR. GRZYB: Well, Your Honor, this is renewal. We  
7 didn't issue bonds -- well, we did issue bonds prepetition,  
8 but the renewal arose --

9 THE COURT: Did they ask you to renew?

10 MR. GRZYB: Well, the bonds themselves self-renew  
11 so --

12 THE COURT: They self-renew because of a  
13 prepetition arrangement. That's why I'm having trouble  
14 understanding how they arise post-petition. It's all --  
15 that's like saying that you write into a promissory note,  
16 "This note is due on January the 4th of 2021 and if you  
17 don't pay it, we're going to automatically renew the note  
18 for six months," and therefore we suddenly have a 364 debt.  
19 I mean, I want to be real about what we're doing here.

20 I understand the importance of the bonds, I think.  
21 That may make them administrative, I don't know, but I don't  
22 think it has to do with when the premiums are due.

23 MR. GRZYB: Well, Your Honor, we are -- I think  
24 you're astute to say we are coming towards some sort of  
25 dispute with the Debtors about how the sureties are going to

1 be dealt with as a group and individually because our  
2 various risks are spread out through the various buckets  
3 that they're trying to -- or they are separating all these  
4 assets. Now --

5 THE COURT: How do you want to resolve that? Do  
6 you want to resolve it in a contested matter? Do you want  
7 to resolve it in an adversary proceeding? How do you want  
8 to actually resolve this dispute? I understand it's a live  
9 dispute and one on which you need a resolution.

10 MR. GRZYB: I think that the first instance,  
11 Your Honor, would be to get a clear answer from the Debtors  
12 about how they intend to handle things like premiums for the  
13 continued extension of surety credit, how -- we don't -- my  
14 clients don't have claims. So other than attorney's fees,  
15 which are recoverable under the Indemnity Agreements, we  
16 don't have loss indemnification claims.

17 How does the resulting Debtor entities intend to  
18 deal with the indemnification obligations that will be owed  
19 to the sureties post-plan confirmation? I'm not --

20 THE COURT: So do you want to resolve it as a  
21 contested matter as part of confirmation, which is what  
22 Mr. Perez has proposed because that's where that will be  
23 determined how they intend to do that and how we approve  
24 doing it and how you object to doing it or do you want to  
25 resolve it in an adversary proceeding in advance of that or

1 a contested matter in advance of that?

2 MR. GRZYB: I think it may make sense for the  
3 surety group to speak with the Debtors to see if we can  
4 clarity on those issues and agree as a group how the  
5 resolution -- how that problem should be resolved. I don't  
6 think I have an objection one way or the other to do it as a  
7 contested matter or an adversary proceeding, Your Honor, as  
8 long as our ability to object to the Plan of Reorganization,  
9 which I'm not even sure we're in a position as a group or  
10 individually to make that objection because we just received  
11 this Disclosure Statement where collectively --

12 THE COURT: Well, confirmation objections aren't  
13 due and I haven't read what they wrote, but let me just take  
14 a couple of hypotheticals. Let's assume that they treated,  
15 as you do with the -- as a prepetition credit agreement  
16 only. At that point, the Plan is required to provide the  
17 resolution of the prepetition credit obligations so it would  
18 have to be resolved in there and it would have to be  
19 resolved with clarity and you would have an opportunity to  
20 object at confirmation unless they leave unimpaired.

21 The second possibility is: they treat it as an  
22 executory contract. If it's an executory contract, again it  
23 has to be dealt with with clarity and whether they assume or  
24 reject, you'll have to opportunity to deal with it at  
25 confirmation. If they reject, presumably you're going to

1 have this large maybe prepetition unsecured claim and maybe  
2 you're telling me part or all of it is post-petition  
3 administrative and that will depend on whether it's treated  
4 as an executory contract. If you're right it's a credit  
5 agreement, then it probably is not an executory contract.

6 I don't know what the third option is so that it  
7 wouldn't get resolved at confirmation. And if you're happy  
8 resolving at confirmation, that works. It's just your  
9 raising it now. And if you want it resolved by an adversary  
10 proceeding, I'm prepared to allow you to deal with it that  
11 way. So I just -- I need to know what your client wants,  
12 not what -- I heard what the Debtor wants. They want to  
13 wait, they want to do deal with at confirmation. I want you  
14 know what you want.

15 MR. GRZYB: Well, I'm not sure, Your Honor, I was  
16 prepared to answer that question because our objection was  
17 limited to -- and I would need to discuss it with my various  
18 clients and likely the surety group as a group. I can see  
19 some benefits to doing it as an adversary proceeding and  
20 then having it resolved that way.

21 THE COURT: Do you want me to give you two weeks,  
22 is that long enough to decide?

23 MR. GRZYB: Judge, I would appreciate that. Thank  
24 you very much.

25 THE COURT: Is that enough time though?

1 MR. GRZYB: And the two weeks would entail, Judge,  
2 that I would -- we, as a group, would come to Your Honor and  
3 say we want to do this either through plan confirmation  
4 objection or by way of adversary proceeding or --

5 THE COURT: I'll make it easier than that. I'll  
6 give you two weeks to file an adversary proceeding. If you  
7 don't, we'll resolve it at confirmation if you want. I  
8 don't want make you come back and just spend money. It's  
9 your choice. If you want an adversary proceeding -- unless  
10 I hear something pretty strenuous from somebody that's not  
11 the right thing to do, I'm just going to give that to you.  
12 And if you don't, it really sounds like it gets resolved as  
13 a contested matter at confirmation.

14 I mean, maybe there's some other alternative. I'm  
15 not going to preclude you from doing something, but I think  
16 giving you two weeks to commence an adversary proceeding --  
17 if you need more time, just tell me. I'm trying to  
18 accommodate what your client wants. I do want to get it  
19 resolved in the right way.

20 MR. GRZYB: That makes sense to me, Your Honor. I  
21 appreciate that.

22 THE COURT: All right. Mr. Eisenberg I know  
23 wanted to address this question. Mr. Eisenberg, go ahead  
24 please.

25 MR. EISENBERG: Thank you. Good morning,

1 Your Honor. Happy New Year.

2 THE COURT: Good morning. Happy New Year to you.

3 MR. EISENBERG: And I hope everybody's doing very  
4 well and will continue to do so. We join into the limited  
5 objection as well to exclusivity again because of the  
6 factual underpinnings that were the basis for it. Some of  
7 those have been removed by the filing of the Disclosure  
8 Statement and Plan. There are still significant holes in  
9 the information that's been provided. There's a whole list  
10 of schedules to be provided.

11 We also on information and belief and have looked  
12 at the Monthly Operating Reports and see that there has been  
13 a large accumulation of cash by the Debtors and have  
14 significant concerns with regard to current and accruing  
15 decommissioning obligations and not having very much  
16 transparency on that right now and how that all fits in to  
17 the picture obviously, what is an administrative expense to  
18 the Estate from the standpoint from decommissioning, what  
19 rights does that give to the sureties themselves when the  
20 Estate has an administrative expense that's currently due  
21 and doesn't perform. And those are things that obviously we  
22 joined in to get more transparency on and to gather more  
23 information.

24 So when Your Honor said that we can file this  
25 adversary in two weeks, I'm not sure that that's enough



1 time. Certainly we could try to get together and figure  
2 that out whether that's the appropriate way. Obviously we  
3 could come back and tell Your Honor, "This is what we've  
4 tried. We need to figure out some further information and  
5 we need to get back together to decide what to do." I'm not  
6 sure that all of the sureties themselves will take the same  
7 position, Your Honor, and so that is obviously a question,  
8 so that's why we joined in to be heard.

9 We have been making progress with the Debtors and  
10 I do want to congratulate the Debtors on the efforts that  
11 they've made so far to move this forward. They had an  
12 original deadline for putting a revision to the Apache term  
13 sheet together, that I think they've taken twice as long to  
14 do that. It's almost five months. So this is not an easy  
15 question to tackle, Your Honor.

16 And so seeing the Disclosure Statement, the  
17 revised Apache term sheet, these extensive Schedules that  
18 they have of the properties, the breakdowns that they have,  
19 this is going to require significant analysis and each of  
20 the sureties may or may not have the same position on that  
21 depending upon which of the silos they end up in,  
22 Your Honor, so we are going to try to endeavor to do that.  
23 So we do applaude the Debtors on getting that together  
24 because obviously it has proved to be a significant task for  
25 them.

1           We also are engaged in voluntarily sharing  
2 information, getting information from them. We gave them a  
3 draft 2004. We've got a written agreement with them and  
4 they are producing information to us right now. It is  
5 rolling out to us and so we did not have that information  
6 and that agreement at the time that we joined in on the  
7 limited objection to the exclusivity, so just filing that  
8 joinder has helped us to continue to move the ball forward  
9 here, but I think that we're going to need a lot more  
10 information here and a lot more financial analysis and  
11 breakdown before we're going to be able to kind of really  
12 come together on that.

13           And just the fact that it took the folks that have  
14 all that information five months to try to put something  
15 together that has these -- still is wanting on the financial  
16 analysis tells you that this is not an easy task,  
17 Your Honor. And your past experience in other cases will  
18 also inform Your Honor that this takes quite some time to  
19 kind of put all these pieces together because when you do --  
20 you put assets in one company and you move them out of  
21 another, you expose certain people to certain expenses but  
22 not others. It does change the way things work.

23           Some of the properties and some of the companies  
24 are producing revenues. We need to figure out how they're  
25 deconstructing their various subsidiaries into the new silos

1 so we can trace the funding to see what that means with  
2 regard to the transactions that are going on and so there is  
3 a lot of effort that has to go on.

4 And so I think the answer to Your Honor's question  
5 is there has to be some process to decide this, but what the  
6 right one yet is, I don't know just coming back to work on  
7 the 4th of January having had the files over the weekend.

8 THE COURT: Mr. Eisenberg, most of what you have  
9 described deals with whether the functioning of the Plan is  
10 rational and appropriate and not does impair people. It  
11 does not deal with the more fundamental issue of whether  
12 these claims are administrative or not from a declaratory  
13 point of view.

14 Do you think there are factual issues that we need  
15 to resolve or is this going to be decided -- that narrow  
16 question, is it administrative/non-administrative with  
17 respect to a bond -- a surety bond for P&A work. I don't  
18 think that's going to be a factual-based issue. I think  
19 it's a law question. And I want to know if your -- if the  
20 facts that you have described that you need to know will  
21 affect the outcome of the it is admin, it is not admin  
22 question.

23 MR. EISENBERG: Well, to the extent that there is  
24 post-petition credit being extended to the Debtors, that is  
25 not a prepetition extension of credit and so premiums for a

1 post-petition extension of credit I would believe would  
2 clearly fall under an administrative claim.

3 THE COURT: And if you're telling me that your  
4 client is issuing a new bond, then I don't know what the  
5 defense to that argument you're making would be. But if  
6 it's leaving a credit extended for a prepetition bond, that  
7 is a different question and one for which declaratory relief  
8 may be appropriate.

9 MR. EISENBERG: And whether the bond extends to a  
10 new period of liability that didn't exist prepetition is  
11 going to be a fact question. What the Debtors are doing  
12 with the properties that are covered by the bonds is going  
13 to be a factual question.

14 THE COURT: But let's take that example. What the  
15 Debtors are doing with -- let's assume that they are doing  
16 some P&A work or not doing some P&A work, either one.

17 How does that affect the question of whether your  
18 client's claim is an administrative claim or not? It may  
19 affect the magnitude of the claim by reducing it if they're  
20 doing P&A work, but how does it affect whether it is admin  
21 or not admin?

22 MR. EISENBERG: How does it affect whether my  
23 claim is admin or not admin?

24 THE COURT: Right.

25 MR. EISENBERG: Because on a post-petition basis,

1 we're entitled to additional collateral, we're entitled to  
2 additional protections going forward under our Agreements  
3 with regard to --

4 THE COURT: And why does that affect the question  
5 of whether it is an admin or a non-admin claim?

6 MR. EISENBERG: Because we don't know whether  
7 they're going to take these properties and put them into a  
8 new company and the new company's going to want to assume --  
9 try to work out a financial --

10 THE COURT: That's a confirmation --

11 MR. EISENBERG: -- accommodation with us.

12 THE COURT: No, that's a confirmation question.  
13 We already dealt with that. I want to know whether the  
14 claim itself is admin or non-admin. Seems to me a pure  
15 question of law.

16 MR. EISENBERG: I don't think so because we have  
17 rights of subrogation against the Debtors, against other  
18 people. We have rights that -- other rights. We have to  
19 analyze that on a property-by-property basis, Your Honor,  
20 and that's going to take a long time because it's not one  
21 surety and it's not one bond and it's not one property  
22 and --

23 THE COURT: So let me take -- you're telling me  
24 you have rights to subrogation. Again let me assume that's  
25 accurate.

1           How would -- what facts would determine whether  
2 those subrogation rights are prepetition or administrative?  
3 Because subrogation doesn't elevate you from -- it only  
4 elevates you into whatever subrogation rights exist right?  
5 You don't get a different status other than maybe the status  
6 of the person whom you subrogated.

7           MR. EISENBERG: But if the Debtor had an  
8 administrative obligation to do P&A and our --

9           THE COURT: Okay.

10          MR. EISENBERG: -- bonds are exposed to that --

11          THE COURT: Correct.

12          MR. EISENBERG: -- then why wouldn't we have a  
13 claim -- an administrative claim for doing that?

14          THE COURT: Maybe you do, but isn't that a law  
15 question?

16          MR. EISENBERG: Well, I'm not sure. I have to  
17 look, Your Honor. I don't know what the Debtors are  
18 planning on doing here. I don't know enough yet.

19          THE COURT: Okay.

20          MR. EISENBERG: I got a list of all these  
21 properties they want to abandon. I don't have any  
22 transparency into their current and not-done plug and  
23 abandonment. I don't know how this whole thing's getting  
24 divided up yet.

25          THE COURT: Okay.

1 MR. EISENBERG: And to answer the question on how  
2 to proceed procedurally without understanding that, getting  
3 a full opportunity to understand that, I don't think we're  
4 getting a fair opportunity here. They've had two and a half  
5 months beyond the two and a half months they gave  
6 themselves.

7 THE COURT: Fair enough. Let me hear from  
8 Mr. Bains. Mr. Bains?

9 MR. BAINS: Good morning, Your Honor.

10 Brandon Bains on behalf of Liberty, Travelers,  
11 Hanover and XL. Happy New Year to you. I guess I would  
12 (indiscernible) a lot of what was already said so I'm not  
13 going to belabor those points. Obviously when we filed  
14 these objections there had not yet been a plan and  
15 disclosure statement. Like everyone else, I'm trying to get  
16 done with my black-eyed peas, New Year's Day and understand  
17 what is going on in the Plan.

18 I guess suppose agree with Mr. Perez to some  
19 extent that if there needs some answers, then maybe all of  
20 this is academic and we never get to the ultimate question,  
21 but I would also say there does need to be transparency to  
22 also with Mr. Eisenberg. When we started these process, the  
23 Debtors said, "Hey, we want to ask the Court for authority  
24 or pay premiums." Well, now it appears there was an  
25 intention to pay premiums and if that's the case, just tells

1 us that. We can go fight about it. You'll give us an  
2 answer.

3 And I think it's the same thing here whether with  
4 respect to premiums or indemnity or what's going to happen  
5 to all of these bonded assets, but there's a lot of talk in  
6 the Plan and Disclosure Statement about sureties and bonds,  
7 but there's no actual information about what's going to  
8 happen to them.

9 To be fair, we just got (indiscernible) to have  
10 emails prepared to Mr. Perez that will go out today asking  
11 these questions. I'm hopeful I'll get answers and I'm  
12 hopeful I don't have to come back and say anything else, but  
13 we need that stuff. And if they're going to tell some of  
14 these entities are going to take care of premiums and  
15 reaffirm indemnity and all of that, then it won't matter.  
16 We just don't know.

17 Mr. Eisenberg's point if we can get answers within  
18 the next two weeks, that's wonderful and maybe it'll take  
19 care of it. I'm not sure that we can and we feel just a bit  
20 behind the eight ball given the timing of all of this and  
21 when these things have been dropped and otherwise. I think  
22 some of these --

23 THE COURT: What factual issues will assist us in  
24 determining whether it is administrative or non-  
25 administrative in nature?



1 MR. BAINS: Some of the factual issues go to what  
2 those intentions for some of these debts. I understand  
3 certainly, Your Honor, where you're coming from on the  
4 prepetition and post-petition. I've heard it in other cases  
5 and you've been very clear about it, but certainly the  
6 Debtors needs these to operate and if their intention is not  
7 to honor their obligations whether they're premium  
8 obligations or they're underlying obligations under the  
9 Plan, the bond could be culled (indiscernible), the bond  
10 could be cancelled, the bond could not be renewed depending  
11 on all the different specific bonds out there. I certainly  
12 don't speak for every surety, but there are sureties that  
13 have rights (indiscernible) here and now or not renew or  
14 whatever the terms of the bonds allow.

15 Now in the ordinary course, the Debtors don't want  
16 that. They want to bonds to not renew. They need these to  
17 go forward, but of course they can't get credit for free.  
18 Wouldn't allow that with any other lender and it shouldn't  
19 be the surety either.

20 THE COURT: All right. And I didn't ask the  
21 others. Let me ask you.

22 Do you actually oppose the extension of  
23 exclusivity or you just want to be sure I'm getting focused  
24 on this question? It looks like you want to be sure we get  
25 focused on this question.

1 MR. BAINS: Are you asking me, Mr. Bains,  
2 Your Honor?

3 THE COURT: Yes, sir.

4 MR. BAINS: My sureties do not oppose exclusivity.  
5 They join all of the other issues surrounding premium, flow  
6 of information and just the extent to which the Debtors are  
7 saying that's a basis for exclusivity. We disagree since  
8 payments are not being made in the normal course.

9 THE COURT: All right. Who else wants to address  
10 this question?

11 MR. BAINS: Can you please repeat that?

12 THE COURT: Does anyone else have anything you  
13 want to talk to me about on the exclusivity issue or the  
14 surety bond issue?

15 MR. BAINS: Your Honor, I do not.

16 THE COURT: Thank you. Anyone else? From  
17 646-468-7792, who do we have on the line?

18 MR. HANSEN: Good morning, Your Honor. This is  
19 Kris Hansen with Stroock and Stroock and Lavan, on behalf of  
20 the Official Committee of Unsecured Creditors.

21 THE COURT: Mr. Hansen, good morning.

22 MR. HANSEN: Good morning. Your Honor, I just  
23 wanted to make brief comments with respect to the Plan and  
24 Disclosure Statement and the plan process and the  
25 exclusivity request. The Committee does not have an

1 objection to the relatively short exclusivity extension  
2 sought by the Debtors. We recognize that the case needs to  
3 move forward and we appreciate that the Debtors haven't  
4 asked for an extraordinary length of time here.

5           However we wanted to make the Court aware that the  
6 Committee really hasn't been involved in the formulation and  
7 the negotiation of the Plan. The Debtors have obviously  
8 invited us along with the first lien lenders to negotiate  
9 from this point forward. And we did get a little bit of a  
10 preview on the document before it was filed. But for lack  
11 of a better way to describe it, the Committee feels a bit  
12 like the Plan was negotiated and dropped on them with an  
13 invitation to participate going forward. We're having --  
14 that's not uncommon in cases, but from the Committee's  
15 perspective, we would have appreciated having a better  
16 opportunity to work with the Debtors and the lenders to get  
17 to the point where we are now.

18           And our perspective is that is a \$5 million  
19 recovery of the class of claims that they've identified in  
20 the Plan that it significantly undervalues the unencumbered  
21 assets, which we've discovered that there are more than a  
22 nominal amount of those. And we also view the Plan as  
23 antagonistic towards essentially every case constituent  
24 other than the first lien lenders and it uses, in our view,  
25 an artificially low plan value, it balloons the general

1 unsecured claim class and it gives them an initial recovery.

2           It also sets up, at least from our perspective, a  
3 potential dispute with the governmental lessors and  
4 regulators regarding abandoned property liabilities and the  
5 assumption of existing P&A liabilities. And from our  
6 perspective, it also doesn't deal adequately with the M&M  
7 liens that have been filed on the Court's Docket.

8           So while we plan to negotiate as best we can going  
9 forward to carry out our fiduciary duties, we did want to  
10 make the Court aware that if something doesn't change in a  
11 material way, this is going to be a contested process on the  
12 way to confirmation on behalf of the Committee.

13           THE COURT: Mr. Hansen, thank you. Look, I --  
14 some of the lawyers that have been arguing this on behalf of  
15 the lenders have worked extensively in other cases before me  
16 to productively resolve P&A obligations in a very hard-  
17 fought well way. These are really difficult issues. And as  
18 I listened -- and it sounded like I was arguing with  
19 Mr. Eisenberg -- he's setting himself up to do that again.  
20 And I am more than happy if there's a way to get these  
21 matters resolved by working through really hard facts.

22           I think that is a separate question from whether  
23 the rights under the surety bond are administrative or not  
24 administrative. Those rights can be vindicated in a number  
25 of ways. One is they can be vindicated at confirmation

1 because if they are, in fact, administrative claims and the  
2 Debtor is unable to pay the administrative claims, then  
3 confirmation would simply be defeated. We would end up  
4 making a fact finding. That fact finding or law finding  
5 whatever it is would end up being appealable. Another way  
6 is it could occur through an adversary proceeding and that  
7 adversary proceeding could drag out forever and could delay  
8 confirmation.

9           Here's what I think I'm going to do and then I'm  
10 going to announce this and then I want to hear objections to  
11 it. First, I'm going to extend exclusivity as requested by  
12 the Debtor. I don't think that the objections really go to  
13 whether we ought to extend exclusivity. They go to whether  
14 we ought to get the case moving and we're going to get the  
15 case moving.

16           Second, I want to set a deadline subject to  
17 objections I'm going to hear of January 20th for the filing  
18 of an adversary proceeding where we would make summary  
19 judgment rulings prior to or at the Confirmation Hearing so  
20 an expedited adversary proceeding. If an adversary  
21 proceeding is commenced by January 20th, cross-motions for  
22 summary judgment would be due not later than February the  
23 10th and then we would have arguments on the cross-motions  
24 for summary judgment on solely the question on whether the  
25 obligations are administrative or not administrative and

1 those would be -- I'm going to get you a date right now --  
2 on February 24th, at 9:00 o'clock in the morning.

3 That will not preclude the filing of an adversary  
4 proceeding at a later date. You're just not going to get a  
5 ruling on your adversary proceeding prior to confirmation.  
6 It's going to have to be a part of confirmation ruling. I  
7 don't see a reason why we can't rule on this as a contested  
8 matter, if that's the way that the parties want to tee it  
9 up, because it's a matter that will arise in a contested  
10 proceeding and that is is the Plan confirmable or not  
11 confirmable?

12 But I also see some benefit to people having the  
13 discrete issue and if they want that out there, they -- I'm  
14 going to give them the right to file this expedited  
15 administrative -- excuse me -- expedited adversary  
16 proceeding so that we can get things resolved quickly.

17 Let me hear objections to that sort of  
18 comprehensive ruling. In other words, it is not a deadline  
19 by which you have to file an adversary proceeding. It's  
20 only a deadline by which you have to file an adversary  
21 proceeding if you want your really quick answer. Otherwise  
22 take your time and we'll do it that way, but it may get  
23 resolved after confirmation.

24 And obviously some things will get resolved at  
25 confirmation. I could foresee, for example, a provision in

1 a confirmation order that says they'll be paid as admin  
2 claims if they are admin claims and we have enough money to  
3 pay them with, but they'll be paid as non-admin claims if we  
4 win the adversary proceeding. So you can have a toggle at  
5 confirmation. Let me see who objects to that as the way  
6 that we will proceed.

7 Mr. Grzyb, go ahead please.

8 MR. GRZYB: Your Honor, I don't have an objection  
9 to the concept that you've laid out. And I know I  
10 previously indicated I'd be okay with two weeks, which is  
11 essentially what Your Honor is ordering. And this goes to  
12 Mr. Eisenberg's point previously, which is we could get to  
13 January 20th, not have the additional information that we  
14 need from the Debtors, be in a position where we file the  
15 SJ Motions and it ends up that we get the information after  
16 the fact and it was all for naught.

17 So because some of us don't have an objection to  
18 the Plan or some of us are going to be told that we're being  
19 treated in a way that makes it not necessary for us to go  
20 forward with this battle, the -- so I would ask -- request  
21 if the Court had more time after January 20th.

22 THE COURT: You can have as much time as you want.  
23 I just don't know how I finish if you don't get it filed by  
24 the 20th. And you can argue it at confirmation is fine with  
25 me. But in terms of having an adversary proceeding

1 resolved, that's -- I'm trying to give you an opportunity  
2 for expedited, not a normal adversary proceeding.

3 And does that inflict any injury on your client?

4 MR. GRZYB: I don't think so, Your Honor.

5 THE COURT: All right. Mr. Eisenberg?

6 MR. EISENBERG: (No audible response).

7 THE COURT: I can't hear you, Mr. Eisenberg. You  
8 may have your own line muted. Let me see. It looks like  
9 you -- all right. Mr. Eisenberg, go ahead.

10 MR. EISENBERG: Thank you, Your Honor. I  
11 accidentally hung up earlier and had to redial in and so I  
12 apologize to Your Honor.

13 THE COURT: You missed some interesting stuff,  
14 Mr. Eisenberg, but your line didn't get poured out yet so it  
15 was --

16 MR. EISENBERG: No, I gotcha. I appreciate that.  
17 I dialed back in pretty quickly so I can hear everything  
18 else. So listening to Your Honor's suggestion, to the  
19 extent that we believe that there are discrete legal issues  
20 that would entitle a surety to administrative expense  
21 treatment for a premium Your Honor has provided --  
22 suggesting a procedure for us to file that. To the extent  
23 that someone contests that and says, "No, you're not  
24 entitled to that," that doesn't preclude us from raising  
25 factual issues in response to a cross-motion and I just



1 wanted to confirm that with Your Honor.

2 THE COURT: That's right. I think that -- I do  
3 think that the legal issue is a really interesting one. You  
4 know I have a predisposition about it, but you've also seen  
5 me change my predispositions with good argument frequently.  
6 So I'm just -- I don't want to hide that from people. But  
7 you have the right to litigate it and I need to make a more  
8 formal decision than my predisposition. And even I rule  
9 again you, you need the ability to appeal it and that's all  
10 I'm trying to set up there.

11 MR. EISENBERG: It's just a lot to do in a short  
12 period now that we've got the Plan, Your Honor, now that  
13 we're finally getting an information flow from these folks  
14 and we appreciate that very much. Again we think that there  
15 has been progress made since we filed the limited objection  
16 and so we're not really vehemently objecting to the  
17 extension of exclusivity. That obviously is not the reason  
18 we were heard today.

19 We will -- I will talk to my clients, I'll talk  
20 with the other sureties. I'm not sure that 16 days is  
21 enough time for us to tee up an issue of this importance,  
22 but I do understand Your Honor's providing us with an  
23 opportunity to try to get clarification for it prior to what  
24 is currently being suggested as the confirmation date.

25 THE COURT: I don't think it -- I guess the main

1 thing I want to be sure of, Mr. Eisenberg, is I don't think  
2 it hurts your client. It's not going to take away any  
3 confirmation objection that you would have and it won't take  
4 away your right to file an adversary proceeding. I'm just  
5 trying to give you the ability to file an adversary  
6 proceeding with a quick answer on the law question.

7 Am I hurting you all in any way?

8 MR. EISENBERG: Only that I think I would like a  
9 little bit more time to even get a law summary judgment teed  
10 up than 16 days because we've got a whole varied group of  
11 sureties that we have to deal with and it's not as easy as  
12 just one person putting it together. And there are  
13 different positions for the bonds. The bonds are not all  
14 the same, Your Honor.

15 THE COURT: Right. Okay. Thank you. Mr. Bains?

16 MR. BAINS: No objection, Your Honor. And I can  
17 echo what Mr. Eisenberg and Mr. Grzyb have said. I would  
18 note we do have different positions here. Certainly if we  
19 could get this to fit nicely into one adversary, I think  
20 that makes sense, but we can talk amongst the surety group  
21 and perhaps circle back with you if we think there are  
22 multiple questions or multiple adversaries, but that's more  
23 of a minor issue that I think we can handle down the road if  
24 the group elects to move forward with this procedure.

25 THE COURT: Mr. Perez?

1 MR. PEREZ: Your Honor, only a couple of items.  
2 Number one, obviously the Court has ruled and we thank you  
3 for the ruling. We did file a witness and exhibit list.  
4 Mr. Dane is present and would be --

5 THE COURT: I haven't ruled. It was a suggested  
6 ruling to which I'm taking objections before I rule.

7 MR. PEREZ: All right. Well, in that case,  
8 Your Honor --

9 THE COURT: I'm not going to stop you from putting  
10 on evidence and stuff like that.

11 MR. PEREZ: I just -- we did have Exhibits 1  
12 through 9 including Mr. Dane's Declaration. Mr. Dane is  
13 present. We would move those as document -- as support for  
14 the ruling. It's Docket No. 734-1 through Docket No. 734-9.

15 THE COURT: Before I get there, do you have any  
16 objection to the procedure of allowing but not mandating an  
17 expedited targeted adversary proceeding?

18 MR. PEREZ: Your Honor, we have no objection to  
19 any procedural mechanism that allows us to be able to meet  
20 our burden at a scheduled confirmation hearing with respect  
21 to our ability to confirm a plan let's say two and a half  
22 months from now on March 17th. So I think this is a good  
23 way of doing it, but what I don't want is then for somebody  
24 to say, "Well, you can't then confirm a plan because we  
25 haven't gone through all of this." We haven't gone through

1 the -- they raised the factual issue and we're still  
2 litigating that. I just don't want that to be an impediment  
3 to us being able to put on our case March 17th and be able  
4 to try to persuade the Court to confirm the Plan. That's my  
5 only concern.

6 And, Your Honor, obviously at the appropriate  
7 time, we'll talk about our liquidity, we'll talk about all  
8 of those other items that were raised on information and  
9 belief. This company -- as the Court is aware, there have  
10 been multiple, multiple storms in the Gulf this summer which  
11 have obviously impacted our operations. There's been issues  
12 related to the COVID-19. So we do -- it did take us a while  
13 to reach agreement to get this on file working very, very  
14 hard with Mr. Schaible and Mr. Suris (phonetic) and we're  
15 definitely committed to continuing that work, but we don't  
16 -- this is going to be difficult. I mean, the whole  
17 situation is difficult just because of the nature of the  
18 situation, Your Honor.

19 THE COURT: Yeah, I don't think I'm going to blame  
20 you much for building cash up in a bankruptcy case.

21 From 512-779-3367, who do I have?

22 MR. BRESCIA: Good morning, Your Honor. This is  
23 Duane Brescia. I'm dialed in on video as well as the  
24 telephone.

25 Can you hear me okay?

1 THE COURT: Mr. Brescia, good morning.

2 MR. BRESCIA: Yes. Thank you, Your Honor. I  
3 represent Zurich American Insurance Company. We're another  
4 one of the sureties. I'm not going to repeat what's been  
5 said, but along the lines of Mr. Perez trying to make sure  
6 he's not going to be sandbagged somewhere in this process  
7 with the outline that you suggested, I just wanted to get  
8 clarification as well that the sureties will have those same  
9 benefits meaning if there is an adversary proceeding, to  
10 rule on a legal issue prior to confirmation, that we're not  
11 precluded from raising similar issues at confirmation  
12 because I don't want to have a situation where several  
13 parties including the Debtor are saying, "That's not a  
14 confirmation issue. We're dealing with it in an adversary  
15 over here and it's going to be dealt with that way."

16 In addition, I do see an issue where -- even if  
17 it's an administrative claim issue does not necessarily have  
18 to be resolved prior to confirmation. I mean, there still  
19 can be a determination that there are administrative claims,  
20 I guess, post-confirmation based upon what the Confirmation  
21 Order says. So all the --

22 THE COURT: Mr. Brescia, let me be sure I answer  
23 that because I think I know what you're asking and if not, I  
24 want to re-ask it because I want to be sure everybody knows  
25 where they will sit. If you file a motion for summary

1 judgment and they file a cross-motion for summary judgment  
2 and I rule that it is an administrative claim, I'm not going  
3 to allow them at confirmation to argue I got it wrong in the  
4 adversary proceeding. They're going to be bound by that.

5 If it rule it is not an administrative claim, you  
6 can raise the objection, which will then get overruled so  
7 you can have it on appeal. But if you've lost on the  
8 adversary proceeding, you don't get to relitigate it over in  
9 the main case. You simply get to take it up that I was  
10 wrong over on Point A and therefore I'm repeating the error  
11 on Point B.

12 If there are factual issues that haven't been  
13 resolved, they may or may not need to get resolved in the --  
14 as part of confirmation. The fact that they are also part  
15 of the adversary proceeding isn't going to stop. But if  
16 there's a ruling in the adversary proceeding, I'm not going  
17 to revisit it after I've ruled again in the main case no  
18 matter who wins or loses. That just needs to get appealed.  
19 I want to be sure I can give you a complete answer to your  
20 question so that everybody knows where they'll stand.

21 MR. BRESCIA: Yeah, thank you, Your Honor.  
22 Certainly, I mean, you're not going to rule twice on the  
23 same issue. I just want to make sure -- there's going to be  
24 a lot of issues for the sureties surrounding something as  
25 minute as your past-due premiums are administrative claims.

1 There are other issues that we may want to raise at  
2 confirmation that don't make sense in the adversary, but  
3 like I said with this large group of sureties --

4 THE COURT: That's right.

5 MR. BRESCIA: -- we may have different views on  
6 that, yeah.

7 THE COURT: But let me give you an example of that  
8 kind of an issue, at least in my mind, is let's assume that  
9 over in the adversary proceeding, we rule that the claims  
10 are not administrative, but then the Debtor and you treat  
11 this as an executory contract that the Debtors want to  
12 assume. Well, then it's not going to matter whether it was  
13 administrative or not. If they assume an executory  
14 contract, they've got to perform under it, sure within a  
15 reasonable period of time. So if that's the kind of issue  
16 that you want to be sure you got preserved, it would be  
17 preserved.

18 I'm not saying by the way in this colloquy -- I  
19 just want it clear -- that these are or are not executory  
20 contracts. I'm not crossing that bridge today.

21 Is that what you're asking to preserve, that kind  
22 of issue?

23 MR. BRESCIA: Yeah, Your Honor, that might be one  
24 of the issues. I can't on this hearing today think of  
25 everything that the sureties may want to raise at

1 confirmation, but as long as --

2 THE COURT: Right.

3 MR. BRESCIA: -- you know, if there's a minute  
4 issue being treated in any adversary, whether it's ruled on  
5 before confirmation or it's the long version that happens  
6 later that we just need some resolution on, that we're not  
7 precluded from raising anything else related to some of  
8 these issues. So you probably have cleared that up with  
9 your most recent statement.

10 THE COURT: All right. Thank you, sir.

11 Mr. Schaible I know wanted to address matters.  
12 Let me see what he has to say. Mr. Schaible, I got you up  
13 early this morning, right? Good morning.

14 MR. SCHAIBLE: Your Honor, I was up very early.  
15 We've got a COVID dog so I'm up even earlier these days in  
16 this case. So, Your Honor, Damian Schaible of Davis Polk  
17 for the Record.

18 Can you hear me okay?

19 THE COURT: You're actually a little muffled. I  
20 don't know if we can do anything to get your end a little  
21 better or not.

22 MR. SCHAIBLE: Yeah, one second, Your Honor,  
23 please. Your Honor, is that better?

24 THE COURT: No, you remain a little bit muffled.

25 MR. SCHAIBLE: Hold on. Is that better?



1 THE COURT: That is better. Thank you.

2 MR. SCHAIBLE: Okay. Thank you. Sorry,  
3 Your Honor. For the Record, Damian Schaible, of Davis Polk,  
4 on behalf of the Ad Hoc Group of Secured Lenders.  
5 Your Honor, as you know from the outset of the case,  
6 the secured lender group that we represent has about  
7 75 percent now of the prepetition first lien -- first out  
8 facility, which is what people are calling the "first lien  
9 facility" -- I'm sorry -- the first lien term loan facility  
10 which is what people are calling the "first lien facility,"  
11 which is distinct from the FLFO, the first out facility,  
12 which is a separate group that we're working with -- and  
13 28 percent of the second lien term loans and about  
14 97 percent of the DIP.

15 Your Honor, I rise only to agree with Mr. Perez on  
16 a couple of points and just make sure that Your Honor -- it  
17 sounds like Your Honor has completely gotten it, but just to  
18 reiterate. We've been working very hard over the past  
19 number of months. It has taken longer than the initial  
20 milestones would have suggested, but we've been working very  
21 hard on a rather complex situation in order to figure out  
22 what to do with the liabilities and how to save the business  
23 as best we can and we've been working with the Debtors  
24 extensively and with other parties including Apache and the  
25 first -- the FLFO lenders and a number of others as quickly

1 as we can.

2 In order to keep the ball rolling, Your Honor, we  
3 got this Plan on file. Literally we were negotiating  
4 throughout the New Year's Eve and into New Year's Day in  
5 order to get a version of the Plan that we could get on  
6 file, but we recognize, Your Honor, that we still have work  
7 to do. There's work to do with the sureties and there's  
8 work to do with the Creditors' Committee.

9 I cannot promise this Court that we're going to  
10 reach final resolution with everyone or even anyone, but we  
11 can obviously represent to this Court -- and Your Honor  
12 knows that this is the way that we do business -- that we  
13 are going to do our best to find common ground wherever we  
14 can. And we do believe that unfortunately this is a  
15 situation where that common ground may be tough in some  
16 circumstances, but we are going to do our best, Your Honor.  
17 And we're going to bring to you a confirmation -- a  
18 requested confirmation of a plan that's going to have as  
19 much consensus as we can build between now and then.

20 And so I appreciate Your Honor being willing to  
21 move forward. Obviously the Debtors seeking exclusivity is  
22 kind of I would hope an obvious, but with respect to keeping  
23 the Confirmation Hearing that Mr. Perez mentioned, whatever  
24 procedure is used to address the administrative claim  
25 arguments by the sureties we just need to make sure that it

1 doesn't stop us from being able to get this Plan confirmed  
2 because this is not an situation that's going to be well  
3 sitting for a long period of time. We're really working as  
4 fast as we can to reach resolution and then bring it to  
5 Your Honor and we hope to bring you as consensual as  
6 possible and ask you to make whatever calls we need to ask  
7 you to make.

8           And so with that, Your Honor, I would pause to see  
9 if you have any questions but just wanted to reiterate that  
10 we are going to continue to work hard. We have worked hard  
11 so far. As Your Honor knows, we were able to reach  
12 resolution with the Creditors' Committee on the final DIP  
13 Order. We were able to reach resolution with the Creditors'  
14 Committee on two stipulations with respect to the challenge  
15 period and we're going to continue to work hard both with  
16 the Creditors' Committee and the sureties, Your Honor.

17           THE COURT: Mr. Schaible, thank you for your  
18 comments. Let's try and not make Mr. Hansen feel quite so  
19 left out though as we move forward, okay?

20           MR. SCHAIBLE: Will do. Thank you, Your Honor.

21           THE COURT: All right. Thank you. Mr. Perez  
22 moves for the admission of 734-1 through 9.

23           Are there any objections to that?

24           MR. EISENBERG: Your Honor, Philip Eisenberg for  
25 HCCI. I have no objection to the extent that they're only

1 being introduce for the purposes of today's hearing in  
2 connection with the exclusivity Motion extension.

3 THE COURT: Granted. Does anyone object then to  
4 the admission of 734-1 through 9 solely for purpose of  
5 today's hearing?

6 (No audible response.)

7 THE COURT: All right. 734-1 through 9 are  
8 admitted solely for the purpose of today's hearing.

9 (Debtors' Exhibit Nos. 734-1 the 734-9 received in  
10 evidence.)

11 THE COURT: Mr. Perez?

12 MR. PEREZ: Yes, Your Honor. We had Mr. Dane  
13 available. There was a declaration from Mr. Dane that would  
14 be his direct testimony. And, Your Honor, to the extent  
15 the Court has any questions, he's available, but otherwise  
16 we would rest.

17 THE COURT: Does anyone have any questions for  
18 Mr. Dane?

19 (No audible response.)

20 THE COURT: All right. His Declaration has been  
21 admitted. It is probably hearsay, but no one objected so it  
22 is in. I don't see any reason to swear him in. All right.

23 I'm going to -- based on the -- I'm sorry, go  
24 ahead, Mr. Perez.

25 MR. PEREZ: Yeah. And I do want to say that we

1 haven't focused on Apache, but I do really want to say that  
2 they have worked tirelessly to get this across the line so I  
3 know Ms. Russell's here but I do definitely want to commend  
4 them for their significant efforts and I didn't want that to  
5 go without being said.

6 THE COURT: I've learned that over the years  
7 Ms. Russell doesn't get ignored. If she has something she  
8 needs to add, she'll let me know so if she does, I'll let  
9 her press five star. Otherwise I'll let her watch what's  
10 happening, which she may have decided is in her best  
11 interest so. All right. I'm going to extend exclusivity.

12 MR. HANSEN: Your Honor?

13 THE COURT: I'm sorry, go ahead.

14 MR. HANSEN: Yes, Your Honor. It's Kris Hansen  
15 again with Stroock, on behalf of the Creditors' Committee.  
16 Just a quick question for Your Honor. From the Committee's  
17 perspective, we obviously haven't decided yet where we land  
18 on the issue with respect to the sureties, but we would like  
19 to be a part of the adversary process to the extent that  
20 actually gets filed by the sureties from a cross-movant  
21 perspective and since it's expedited, I just wanted to  
22 address now rather than try to file a motion to intervene on  
23 a double-expedited process basis.

24 THE COURT: Mr. Hansen, I actually don't know if  
25 you have standing or not. You may very well. Let me go

1 ahead and get you, if you don't mind -- first of all, I'm  
2 guessing that we're not going to have the adversary  
3 proceeding. We might. If we do, can I invite you to  
4 immediately file an emergency motion to intervene unless  
5 you're named as a defendant? I can certainly see an  
6 argument that because this is going to move a claim from  
7 being a member of your class to being senior to your class,  
8 that you may very well have standing on that. I can also  
9 see arguments that you don't. And I don't think I should  
10 rule on something as important as standing just sitting  
11 here. So can I just invite you to immediately -- maybe  
12 within a week, could you file a motion to intervene, if  
13 that's what they choose to do?

14 MR. HANSEN: Yeah, that would be fine, Your Honor,  
15 no problem at all.

16 THE COURT: All right. Thank you. I'm going to  
17 extend exclusivity. I'm going to ask Mr. Perez to upload a  
18 form of order that extends exclusivity but that also  
19 includes the provisions that we have announced as our  
20 preliminary decision setting the deadlines for the  
21 commencement of an adversary proceeding with a law-only  
22 motion for summary judgment to be filed as well as law-only  
23 responses and the date for argument of that so that we can  
24 get any law-only issues resolved well in advance of the  
25 Confirmation Hearing.

1           Go ahead and include in there that if the  
2 Committee is not named as a party -- and I will just tell  
3 the parties that might file the adversary proceeding life's  
4 probably easier if you name the Committee as a party and I  
5 don't have to worry about this, but if the Committee is not  
6 named as a party, it could move to intervene within a week.

7           Can you upload that Order for me, Mr. Perez?

8           MR. PEREZ: Absolutely, Your Honor.

9           THE COURT: All right.

10          MR. PEREZ: I probably can't but Mr. Carlson  
11 probably can, but we will.

12          THE COURT: Yeah, but he'll file it in the wrong  
13 court.

14          MR. PEREZ: That's the problem. I think it was  
15 his training, Your Honor.

16          THE COURT: Could have been, could have been.

17          All right. Is there anything else we ought to do  
18 this morning?

19          MR. EISENBERG: Your Honor, Philip Eisenberg. I  
20 apologize. I am kind of still a little bit trying to work  
21 my way through the procedural elements here, Your Honor,  
22 with regard to an adversary for seeking an --

23          THE COURT: Right.

24          MR. EISENBERG: -- administrative expense because  
25 typically during a case, if I was going to seek an

1 administrative expense, I would file an application. And I  
2 think the adversary rules would apply through contested  
3 process, but an adversary would require specific plaintiffs  
4 and specific defendants that the Committee's lawyer has  
5 suggested and specific claims to be brought independent of  
6 just the one on the administrative expense.

7 THE COURT: Yeah.

8 MR. EISENBERG: And so when Your Honor says we  
9 have to do this through an adversary, I --

10 THE COURT: No, no, no, no, no. Look I really  
11 didn't mean say that so I may have misspoken. I'm giving  
12 you the right to do it through an adversary proceeding. I'm  
13 not insisting on it. In fact, as I said, I think you're  
14 better off just waiting and dealing with it as a contested  
15 matter. But a bunch of important sureties in this case,  
16 important in the sense of not only important in their own  
17 right, but important as to the case, really were concerned  
18 to try to get it resolved. I'm simply trying to give you an  
19 avenue for doing it.

20 If you choose to deal with this solely as a  
21 contested matter whether it's an application for an admin  
22 expense or simply an objection to confirmation, all that's  
23 fine with me. This is an option, not a requirement.

24 MR. EISENBERG: Okay. Because I was wrestling  
25 with the questions that Mr. Brescia had said about, well,



1 there's still a lot left, there's still other things and I  
2 think Your Honor is trying to figure out a procedural  
3 mechanism for addressing on an expedited basis a discrete  
4 question. But I just didn't want to have to do more than  
5 I -- we needed to do to address Your Honor's at least  
6 initial concerns here.

7 THE COURT: You do not need to. I'll take it all  
8 up at confirmation, but I know that there are times when  
9 things at confirmation seem like a steamroller.

10 MR. EISENBERG: Right.

11 THE COURT: And if your client wanted it resolved  
12 in advance, I'm just trying to give people that opportunity.  
13 But as I said, there is no requirement to commence an  
14 adversary proceeding. Only if you want an expedited  
15 adversary proceeding, it's an avenue that I'm leaving open  
16 as an option.

17 MR. EISENBERG: All right. Thank you, Your Honor.

18 THE COURT: All right. Anyone else?

19 (No audible response.)

20 THE COURT: Okay. Thank you all for dialing in.  
21 We will go ahead and adjourn until our 11:00 o'clock  
22 hearing. Thank you.

23 MR. PEREZ: Thank you, Your Honor. Happy New  
24 Year.

25 THE COURT: Happy New Year to you, Mr. Perez.

1 MALE SPEAKER: Thank you, Your Honor.

2 (Hearing adjourned at 10:02 a.m.)

3 \* \* \* \* \*

4 I certify that the foregoing is a correct  
5 transcript to the best of my ability due to the condition of  
6 the electronic sound recording of the ZOOM/telephonic  
7 proceedings in the above-entitled matter.

8 /S/ MARY D. HENRY

9 CERTIFIED BY THE AMERICAN ASSOCIATION OF  
10 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337  
11 JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
12 JTT TRANSCRIPT #63260  
13 DATE FILED: JANUARY 10, 2021

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